

Senate Daily Reader

Tuesday, February 23, 1999

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State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

555C0047

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB1003** - 2/22/99

Introduced by: Representatives McNenny, Broderick, Chicoine, Cutler, Diedrich (Larry),
Monroe, Napoli, Pummel, Smidt, and Waltman and Senators Dennert, Brosz,
Madden, and Olson at the request of the Interim Taxation Committee

1 FOR AN ACT ENTITLED, An Act to provide for the recovery of certain expenses in an action
2 brought to court by any governmental subdivision relative to the assessment of property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-11 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The circuit court may award disbursements, including reasonable attorneys' fees, in an action
7 brought to circuit court pursuant to chapter 10-11 by any appellant relative to the assessment of
8 property, if the appellant does not prevail in its appeal of the property assessment.

9 Section 2. That chapter 10-11 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 On motion, the Supreme Court may award reasonable attorneys' fees in an action brought
12 to the Supreme Court pursuant to chapter 10-11 against any appellant relative to the assessment
13 of property, if the appellant does not prevail in its appeal of the property assessment. The motion
14 shall be accompanied by counsel's verified itemized statement of costs incurred and legal services
15 rendered.

1 Section 3. That chapter 10-38 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The sixth judicial circuit court may award reasonable attorneys' fees, in an action brought to
4 court pursuant to chapter 10-38 against any appellant relative to the assessment, allocation,
5 equalization, or distribution of property if the appellant does not prevail in its appeal of the
6 property assessment, allocation, equalization, or distribution.

7 Section 4. That chapter 10-38 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 On motion, the Supreme Court may award reasonable attorneys' fees in an action brought
10 to the Supreme Court pursuant to chapter 10-38 against any appellant relative to the assessment,
11 allocation, equalization, or distribution of property if the appellant does not prevail in its appeal
12 of the property assessment, allocation, equalization, or distribution. The motion shall be
13 accompanied by counsel's verified itemized statement of costs incurred and legal services
14 rendered. No award for attorney's fees may be made for or against the State of South Dakota
15 in the Supreme Court.

1 **BILL HISTORY**

2 1/12/99 First read in House and referred to Judiciary. H.J. 32

3 1/22/99 Scheduled for Committee hearing on this date.

4 1/22/99 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 122

5 1/26/99 Motion to Amend, Passed, AYES 45, NAYS 23. H.J. 199

6 1/26/99 House of Representatives Do Pass Amended, Passed, AYES 46, NAYS 22. H.J. 199

7 1/27/99 First read in Senate and referred to Judiciary. S.J. 222

8 2/10/99 Scheduled for Committee hearing on this date.

9 2/12/99 Scheduled for Committee hearing on this date.

10 2/17/99 Scheduled for Committee hearing on this date.

11 2/19/99 Scheduled for Committee hearing on this date.

12 2/19/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 582

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

457C0771

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

HB1213 - 2/11/99

Introduced by: Representatives Napoli, Apa, Brooks, Brown (Jarvis), Brown (Richard), Crisp, Cutler, Diedrich (Larry), Diedrich (Elmer), Duenwald, Eccarius, Engbrecht, Hagen, Hennies, Juhnke, Klaudt, Koetzle, Kooistra, Koskan, Lintz, Lucas, McCoy, McNenny, Monroe, Munson (Donald), Peterson, Pummel, Putnam, Roe, Slaughter, Smidt, Solum, Sutton (Duane), Weber, Wetz, Windhorst, and Young and Senators Rounds, Benson, Bogue, Brosz, Brown (Arnold), Drake, Flowers, Hutmacher, Kleven, Madden, Moore, Munson (David), and Staggers

1 FOR AN ACT ENTITLED, An Act to protect the normal operation and use of sport shooting
2 ranges.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The use or operation of a sport shooting range may not be enjoined as a nuisance
5 if the range is in compliance with those statutes, regulations, and ordinances that applied to the
6 range and its operation at the time when the initial operation of the range commenced. The use
7 or operation of a sport shooting range may not be enjoined due to any subsequent change in any
8 statute, regulation, or ordinance pertaining to the normal operation and use of sport shooting
9 ranges.

10 Section 2. The use or operation of a sport shooting range may not be enjoined as a nuisance
11 by a person who acquires title to real property adversely affected by the normal operation and
12 use of a sport shooting range which commenced operation prior to the time the person acquired

1 title.

2 Section 3. The provisions of this Act do not apply to any recovery for any act or omission
3 relating to the operation or use of any sport shooting range based on negligence or willful or
4 wanton misconduct.

5 Section 4. The provisions of this Act do not apply if there has been a substantial change in
6 the primary use of a sport shooting range.

7 Section 5. This Act does not prohibit a local government from regulating the location and
8 construction of sport shooting ranges after the effective date of this Act.

9 Section 6. For the purposes of this Act, a sport shooting range is an area designed and
10 operated for the use of rifles, shotguns, or pistols as a means of silhouette, skeet, trap, black
11 powder, or other sport shooting. A sport shooting range includes a law enforcement shooting
12 range.

13 Section 7. The provisions of this Act apply prospectively and do not apply to any action filed
14 before the effective date of this Act.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 214

3 1/28/99 Referred to Agriculture and Natural Resources. H.J. 240

4 2/9/99 Scheduled for Committee hearing on this date.

5 2/9/99 Scheduled for Committee hearing on this date.

6 2/9/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 1.

7 H.J. 458

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

661C0560

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **HB1223** - 2/16/99

Introduced by: Representatives Fischer-Clemens, Garnos, Konold, Michels, and Sebert and
Senators Everist and Rounds

1 FOR AN ACT ENTITLED, An Act to allow access to a deceased person's medical record.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 34-12-15 be amended to read as follows:

4 34-12-15. All superintendents, or managers, or other persons in charge of hospitals, lying-in,
5 or other institutions, public or private, to which persons resort for treatment of disease,
6 confinement, or are committed by process of law, shall make and keep a record of all the
7 personal and statistical particulars relative to the inmates, such record to be made at the time of
8 their admittance and in such form of certificate as directed by the secretary of health. In case of
9 persons admitted or committed for treatment of disease, the physician in charge shall specify for
10 entry in such record the nature of the disease and where in ~~his~~ the physician's opinion it was
11 contracted. The personal particulars and information required by this section shall be obtained
12 from the individual, if it is practicable to do so, and if not practicable, shall be obtained in as
13 complete a manner as possible from relatives, friends, or other persons acquainted with the facts.
14 Such record shall be open at all times to the inspection of the secretary of health or ~~his~~ an
15 accredited agent of the secretary.

1 A health care facility shall provide copies of all medical records, reports, and X rays pertinent
2 to the health of the patient, if available, to a discharged patient or the patient's designee upon
3 receipt by the health care facility of a written request or a legible copy of a written request signed
4 by the patient. The health care facility may require before delivery that the patient pay the actual
5 reproduction and mailing expense.

6 If a personal representative of a deceased patient has not been appointed, the following
7 surviving family members, in the priority stated, have the right to copies of the patient's medical
8 record to the same extent as the patient would have the right to copies of the medical record
9 while alive:

10 (1) The spouse, if not legally separated at the time of the patient's death;

11 (2) An adult child;

12 (3) A parent;

13 (4) An adult sibling;

14 (5) A grandparent or an adult grandchild;

15 (6) An adult aunt or uncle, or an adult niece or nephew.

16 A health care facility, complying in good faith with the provisions of this section, may not
17 be held liable for any injury or damage proximately resulting from compliance with this section.

18 This section does not apply to chemical dependency treatment facilities.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 216

3 1/28/99 Referred to Health and Human Services. H.J. 241

4 2/12/99 Scheduled for Committee hearing on this date.

5 2/12/99 Health and Human Services Do Pass Amended, Passed, AYES 10, NAYS 0. H.J. 505

6 2/12/99 Health and Human Services Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

844C0638

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1230** - 2/8/99

Introduced by: Representatives Derby, Crisp, Davis, Jaspers, Konold, and Peterson and
Senators Munson (David), Albers, Drake, Moore, Shoener, and Staggers

1 FOR AN ACT ENTITLED, An Act to provide for the recovery of damages for checks, drafts,
2 or orders not paid upon presentment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. In any civil action brought for the purpose of collecting a check, draft, or order
5 of payment, any person who makes, draws, or issues any check, draft, or order of payment that
6 is dishonored and is not paid within thirty days after mailing of a notice of dishonor sent in
7 compliance with sections 4 and 5 of this Act is liable to the holder or assignee for collection for
8 an amount equal to three times the face amount of the check. However, in no case, including any
9 combination pursuant to section 6 of this Act, may the liability for damages be less than one
10 hundred dollars nor greater than two hundred dollars. The maker, drawer, or issuer is also liable
11 to the holder or assignee for allowable court costs, filing fees, and interest computed at the legal
12 rate from the date of the check, draft, or order of payment was issued. Subsequent to the
13 commencement of an action as provided for in this section, but prior to the court hearing, the
14 maker, drawer, or issuer may tender to the holder or assignee, as satisfaction of the claim, an
15 amount of money equal to the face amount of the check together with the returned check fee as
16 provided for under § 57A-3-421 together with accrued interest and incurred court costs.

1 Section 2. No holder or assignee for collection may assert that any maker, drawer, or issuer
2 has any liability pursuant to section 1 of this Act unless such liability has been determined by
3 entry of a final judgment by a court of competent jurisdiction.

4 Section 3. The maker, drawer, or issuer is not liable for the damages and costs specified in
5 section 1 of this Act if:

- 6 (1) The account contained sufficient funds or credit to cover the check, draft, or order at
7 the time the check, draft, or order was made, plus all other checks, drafts, and orders
8 on the account then outstanding and unpaid; or
- 9 (2) The check, draft, or order was not paid because a paycheck, deposited in the account
10 in an amount sufficient to cover the check, draft, or order, was not paid upon
11 presentation; or
- 12 (3) Funds sufficient to cover the check, draft, or order were garnished, attached, or setoff
13 and the maker, drawer, or issuer had no notice of such garnishment, attachment, or
14 setoff at the time the check, draft, or order was made; or
- 15 (4) The maker of the check, draft, or order was not competent or of full age to enter into
16 a legal contractual obligation at the time the check, draft, or order was made; or
- 17 (5) The making of the check, draft, or order was induced by fraud or duress; or
- 18 (6) The transaction which gave rise to the obligation for which the check, draft, or order
19 was given lacked consideration or was illegal.

20 Section 4. Notice that a check, draft, or order has not been paid upon presentment shall be
21 in writing and given in person and receipted for, or by personal service, or by depositing the
22 notice by certified mail, return receipt requested and postage prepaid, in the United States mail
23 and addressed to such person at the address shown on the check or at the most recent address
24 known to the sender. If the notice is mailed and not returned as undeliverable by the United
25 States Postal Service, notice shall be conclusively presumed to have been given on the date of

1 mailing. For the purposes of this section, the term, undeliverable, does not include unclaimed or
2 refused.

3 Section 5. The notice given pursuant to section 4 of this Act shall include the following
4 information regarding the unpaid check, draft, or order:

- 5 (1) The date the check, draft, or order was issued;
- 6 (2) The name of the bank, depository, person, firm, or corporation on which it was
7 drawn;
- 8 (3) The name of the payee;
- 9 (4) The face amount;
- 10 (5) A statement of total amount claimed, which shall be itemized and may not exceed the
11 amount permitted pursuant to section 1 of this Act;
- 12 (6) A statement that the maker has thirty days from the date notice was given to make
13 payment in full of the total amount claimed; and
- 14 (7) A statement that, if the total amount is not paid within thirty days after the date notice
15 was given, the maker is liable in a civil action for three times the face amount of the
16 check but not less than one hundred dollars nor greater than two hundred dollars and
17 that, in such civil action, the court may award court costs to the payee, holder, or
18 assignee for collection.

19 Section 6. If the same person is the maker, drawer, or issuer of two or more checks, drafts,
20 or orders, such instruments may be combined. An action for their recovery pursuant to section
21 1 of this Act may be brought in any county in which one of the dishonored checks, drafts, or
22 orders were issued or in the county in which the check writer resides. A cause of action under
23 this section may be brought in small claims court, if the amount of the demand does not exceed
24 the jurisdiction of that court, or in any other appropriate court.

25 Section 7. Nothing in this Act prevents the criminal prosecution of the person who makes,

- 1 draws, or issues a dishonored check, draft, or order.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 218

3 2/5/99 Scheduled for Committee hearing on this date.

4 2/5/99 Judiciary Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 390

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

336C0789

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1254** - 2/12/99

Introduced by: Representatives Clark, Brown (Richard), Cutler, Diedtrich (Elmer), Engbrecht, Hennies, Klaudt, McCoy, Roe, Slaughter, Smidt, Sutton (Duane), and Young and Senators Vitter, Benson, Drake, Kleven, and Madden

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to local government
2 officer conflicts of interest.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 6-1-1 be amended to read as follows:

5 6-1-1. ~~It shall be unlawful for any~~ No officer of a county, municipality, township, or school
6 district, who has been elected or appointed, ~~to be interested~~ may have a direct financial interest,
7 ~~either by himself or as an individual or through an~~ agent, in any contract entered into by ~~said the~~
8 county, municipality, township, or school district, either for labor or services to be rendered, or
9 for the purchase of commodities, materials, supplies, or equipment of any kind, the expense,
10 price or consideration of which is paid from public funds or from any assessment levied by ~~said~~
11 the county, municipality, township, or school district, or in the purchase of any real or personal
12 property belonging to the county, municipality, township, or school district or which ~~shall be~~ is
13 sold for taxes or assessments or by virtue of legal process at the suit of ~~such the~~ county,
14 municipality, township, or school district. ~~Such~~ Any such contract ~~shall be~~ is null and void from
15 the beginning. For purposes of this section, the term, direct financial interest, means that the

- 1 officer has the authority or ability to control, direct, or manage the contract-related activities of
- 2 the entity that has contracted with the county, municipality, township, or school district and will
- 3 gain direct financial benefit as a result of the contract.

1 **BILL HISTORY**

2 1/29/99 First read in House and referred to Local Government. H.J. 267

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/11/99 Scheduled for Committee hearing on this date.

5 2/11/99 Local Government Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 485

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0323

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **SB53** -
2/18/99

Introduced by: The Committee on Health and Human Services at the request of the Department
of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the apprehension and
2 transportation of a person believed to require emergency intervention.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 27A-10 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If a competent person agrees to receive treatment at the Human Services Center and the
7 treatment is arranged with the center but upon arrival the person does not consent to admission
8 or if a person agrees to accept treatment at the center and the treatment is arranged but upon
9 arrival the person is examined and found not competent to consent to admission, if there is no
10 next of kin available or if there is next of kin available but the person does not consent to
11 admission, and if the attending psychiatrist has probable cause to believe that the person requires
12 emergency intervention under the criteria in § 27A-10-1, the center may be used as an
13 appropriate regional facility.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 25

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Health and Human Services Do Pass, Passed, AYES 7, NAYS 0. S.J. 60

5 1/19/99 Senate Do Pass, Passed, AYES 29, NAYS 5. S.J. 120

6 1/20/99 First read in House and referred to Health and Human Services, AYES 0, NAYS 0.

7 H.J. 101

8 2/17/99 Scheduled for Committee hearing on this date.

9 2/17/99 Health and Human Services Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 564

10 2/17/99 Health and Human Services Place on Consent Calendar.